

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

EXPEDITEE, LLC,

Plaintiff,

-against-

THE ENTITIES listed on EXHIBIT 1,

Defendants.

Case No. 1:21-cv-6440

Honorable Charles P. Kocoras

**DECLARATION OF QUAN TRUONG IN SUPPORT OF NON-PARTY
OPENCOMMERCE GROUP, INC.'S MOTION
TO MODIFY DEFAULT JUDGMENT ORDER**

I, Quan Truong, declare as follows:

1. I am the CEO of OpenCommerce Group, Inc. ("OpenCommerce").
2. I am over the age of eighteen and am competent to make this declaration. I have personal knowledge of the facts set forth below, and if called to testify as a witness, could and would competently testify thereto.
3. OpenCommerce operates a platform called ShopBase, which offers a sales platform to e-commerce entrepreneurs from throughout the world, allowing them to sell their goods on a cross-border basis.
4. OpenCommerce does not sell goods itself, but rather merely provides a neutral platform for third parties to engage in cross-border sales of their products.
5. Importantly, each seller who signs up for a ShopBase account agrees to OpenCommerce's terms of service, which expressly prohibit the sale of products that infringe on others' trademark, copyright, and other intellectual property rights.

6. Additionally, ShopBase has a Digital Millennium Copyright Act (“DMCA”) form available on its website, which encourages third parties to submit potentially infringing products for review to OpenCommerce. OpenCommerce regularly reviews the DMCA complaints it receives and does not hesitate to remove infringing content from ShopBase upon receiving notice. OpenCommerce also removes infringing content and bans users when it receives notice of potential infringement through other means, including but not limited to, emails, cease and desist letters, takedown requests, and communications through counsel. *Id.*

7. On or about December 2, 2021, Expeditee, LLC (“Plaintiff”) filed its Complaint in this matter. OpenCommerce was not named as a defendant. *See* Dkt. No. 1.

8. On December 2, 2021, Plaintiff moved for an *ex parte* temporary restraining order (“TRO”) against various defendants. *See* Dkt. No. 6.

9. On December 3, 2021, Plaintiff obtained the requested relief of an *ex parte* TRO. *See* Dkt. No. 13.

10. On December 20, 2021, several weeks after Plaintiff obtained its requested *ex parte* TRO, OpenCommerce received a notification from PayPal that OpenCommerce’s access to two accounts (the “PayPal Accounts”) was “limited” due to *XPed LLC v The Entities Listed on Exhibit I* (Case No. 21-cv-6440) (the “Lawsuit”).

11. The two PayPal Accounts at issue are registered to OpenCommerce. These PayPal Accounts are used to manage ShopBase’s PayPal transactions at large and are not specifically associated with any particular merchants, let alone any defendants in this case.

12. One of the accounts at issue currently contains \$447,288.59, and the other currently contains \$55,936.89. Together, they contain \$503,225.48. OpenCommerce requires these funds in order to operate in the normal course of business.

13. On December 20, 2021, through counsel, OpenCommerce contacted Plaintiff regarding the mistaken freeze of OpenCommerce's PayPal Accounts. OpenCommerce explained its role as a neutral third-party platform and offered to provide information regarding any defendants named in the Complaint.

14. On December 23, 2021, counsel for Plaintiff contacted PayPal to unfreeze both of OpenCommerce's PayPal Accounts and stated that OpenCommerce "is not a named defendant, but they operate sites who are named, and its account was frozen as a result." *See* December 23, 2021 Email from Plaintiff to PayPal, Exhibit A (redacted for privilege and confidentiality). At the same time, OpenCommerce disabled the merchant's account who was selling allegedly infringing products, and removed that defendant from the ShopBase platform.

15. On November 29, 2022, Plaintiff obtained a final default judgment order (the Doc. No. 88, the "Order").

16. From what I understand, OpenCommerce's PayPal Accounts were frozen again on December 1, 2022 as a result of this Order.

17. On December 2, 2022, OpenCommerce, through counsel, contacted Plaintiff regarding the second mistaken freeze of OpenCommerce's PayPal Accounts. Again, OpenCommerce explained its role and offered to provide information regarding any named defendants. *See* December 2, 2022 Email, Exhibit B.

18. OpenCommerce repeatedly requested that Plaintiff provide a basis for its freeze of OpenCommerce's PayPal Accounts. Plaintiff identified DarkHorseDesigns as the relevant defendant, justifying the freeze. While it was difficult for OpenCommerce to locate information about DarkHorseDesigns because it is not an active user of the platform, eventually we were able to locate details regarding this merchant. *See* December 8 Email Chain, Exhibit C.

19. On December 13, 2022, OpenCommerce readily provided Plaintiff with details regarding DarkHorseDesigns' total sales, and the fact that it was inactive on ShopBase since December 2021. Specifically, DarkHorseDesigns was only an active merchant on ShopBase from May 2021 to December 2021. OpenCommerce's PayPal accounts only contained 38 cents attributable to DarkHorseDesigns. *See* December 13, 2022 Email, containing Excel spreadsheet regarding DarkHorseDesigns, attached as Exhibit D.

20. Despite receiving this information, Plaintiff continued to uphold the wrongful freeze on OpenCommerce's PayPal Accounts, without explaining the basis for doing so, and refused to confer in good faith.

21. On December 20, 2022, another email was sent to Plaintiff confirming that OpenCommerce is not a defendant and that the only link between OpenCommerce and the Lawsuit is DarkHorseDesigns, which was disabled from the ShopBase platform in December 2021. *See* December 21, 2022 Email Chain, attached as Exhibit E.

22. On December 21, 2022, Plaintiff responded by stating that they were "investigating the matter" and were "operating based on the information provided by PayPal." *See* Ex. E. Plaintiff encouraged OpenCommerce "to reach out to PayPal concerning this issue" but did not otherwise provide a basis for why it believed it was appropriate to hold over \$500,000 of OpenCommerce's funds. *Id.*

23. OpenCommerce did reach out to PayPal regarding this issue and received the following message:

Our legal team have reviewed the PayPal account and show that PayPal at this time has not received a release for this particular defendant. Because this is a court order issued by a third-party law firm, PayPal cannot take action on the account unless further directed by the law firm or court. I would advise merchant to contact the law firm to come to a resolution. Once PayPal has officially received a release from the law firm, PayPal would promptly take action.

See January 6, 2023 Email Chain, attached as Exhibit F.

24. OpenCommerce contacted Plaintiff to discuss this issue repeatedly, including on December 28, 2022, and January 3, 4, and 6, 2023. *See Id.* However, Plaintiff has not responded to these emails.

25. Even after being informed that the assets frozen in the OpenCommerce PayPal accounts had nothing to do with the sale of *any* potentially infringing products, Plaintiff has *still* refused to take steps to narrow the scope of the Order.

26. As a result, Plaintiff continues to freeze the two PayPal Accounts belonging to OpenCommerce, which contain a total of more than \$500,000. This is causing ongoing harm to OpenCommerce's ability to operate its business.

I declare until penalty of perjury of the laws of the United States that the above is true and correct.

Executed on this 10th day of January, 2023.

By: /s/ Quan Truong

Quan Truong

EXHIBIT A

----- Forwarded message -----

From: **Patrick Jones** <pmj@pmjpllc.com>

Date: Thu, Dec 23, 2021 at 12:44 PM

Subject: Xped LLC v. Defendants listed Ex. 1, Case no. 21-6440: request to unlock accounts

To: EEOMaLegalSpecialist@paypal.com <eeomalegalspecialist@paypal.com>

CC: Sarah Beaujour <sb@pmjpllc.com>, Patrick Jones <pmj@pmjpllc.com>

Jana,

Please unlock the following accounts at your earliest convenience:

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

OpenCommerce, Inc. (it is not a named defendant, but they operate sites who are named, and its account was frozen as a result; it operates the ShopBase platform. I have cc'd its counsel.)

Email: [REDACTED]

Account number: [REDACTED]

Sincerely,

Patrick M. Jones

PMJ PLLC

[125 South Clark Street](#)

[Chicago, Illinois 60603](#)

Tel: (312) 255-7976

Cell: (312) 404-3225

Fax: (312) 803-0931

www.pmjpllc.com

[101 North 1st Ave](#)


[Chicago, IL 60602](#)

Phoenix, AZ 85003

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EXHIBIT B

From: Palak Patel palak@jayaramlaw.com 
Subject: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440
Date: December 2, 2022 at 3:32 PM
To: pmj@patjonespllc.com pmj@patjonesPLLC.com
Cc: Lena.Bacani@lozaip.com Lena.Bacani@Lozaip.com, marie.richmond@lozaip.com, cdepreter@agdglaw.com, Vivek Jayaram vivek@jayaramlaw.com, Liz Austermuehle liz@jayaramlaw.com

Hi Patrick,

I hope you are doing well. As you know, we represent OpenCommerce, Inc., which operates the ShopBase platform. According to PayPal, our client's PayPal account has been restrained as a result of your client's Default Judgment Order.

Similar to when your clients served their TRO order upon PayPal, we suspect that our client's PayPal account has been frozen because one or more third-party merchants that use our client's e-commerce platform are named Defendants. Our client uses its now-frozen PayPal account to manage transactions at large across its entire platform; the account is not specifically associated with any particular merchant. (There are over 200,000 merchants using the ShopBase platform.). Moreover, our client uses the funds in this account to pay its employees and otherwise operate its business. As a result, we would ask that you contact PayPal as soon as possible to request that they unfreeze our client's account. The accounts are associated with the following email addresses:

- [REDACTED]
[REDACTED]

Our clients are willing to coordinate with respect to any Defendants in Exhibit 1 to the Default Judgment Order. However, we do need to investigate whether any named merchants are on the ShopBase platform so that our client can immediately freeze those merchants' account balances to prevent any withdrawals while we gather more information about the merchant, including the merchants' contact information and information regarding any of the merchants' financial accounts. However, we cannot do that until our client's PayPal account is unfrozen.

Please let me know if you have any questions or if you would like to discuss this further.

Thank you.

J a
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lawyers for innovators®

Palak V. Patel, Esq. (She/her)
Director, Legal Services

Admitted in Illinois

O: 312-736-1226
M: 847-863-7102

125 S Clark St, Suite 1175
Chicago IL

www.jayaramlaw.com

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EXHIBIT C

LA

From: Liz Austermuehle liz@jayaramlaw.com
Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440
Date: December 8, 2022 at 10:36 AM
To: Marie Richmond marie.richmond@lozaip.com
Cc: Lena Bacani lena.bacani@lozaip.com, palak@jayaramlaw.com, cdepreter@agdgllaw.com, Vivek Jayaram vivek@jayaramlaw.com
Bcc: Liz Austermuehle liz@jayaramlaw.com

Hi Marie,

Just checking in — do you have any other information about Darkhorsesdesigns that could be used for our client to search? Based on the name alone, they are not finding any affiliation between that defendant and their platform, yet their accounts remain frozen.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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On Dec 7, 2022, at 11:01 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

Our client cannot find any merchant using ShopBase under the name Darkhorsesdesigns. If you have a domain, email address, or any other information about the defendant that they could use to search, that would be very helpful.

Our client's account remains frozen, and we would appreciate your assistance in lifting the freeze as soon as possible.

Thanks,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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On Dec 6, 2022, at 1:16 PM, Marie Richmond <marie.richmond@lozaip.com> wrote:

Hi Liz,

Thank you for your email, we are currently looking into this matter. Our records indicate that defendant "Darkhorsedesigns" is connected with the email addresses you have identified. Exhibit 1 is attached per your request. If you believe this is in error, please provide documentation to demonstrate why the account in question should be released.

Marie E. Richmond, Esq. (She/Her)
Partner

Loza & Loza, LLP | An Intellectual Property Solutions Group
California § Colorado § Connecticut § Illinois § New Mexico § Texas § Utah § Virginia § Washington D.C.
(323) 967-8404 DIRECT/FAX

marie.richmond@lozaip.com | <https://www.lozaip.com/attorney/marie-richmond/>

MAIL ALL CORRESPONDENCE TO: 305 N. Second Ave., #127, Upland, CA 91786

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From: Liz Austermuehle <liz@jayaramlaw.com>

Sent: Tuesday, December 6, 2022 10:10 AM

To: Lena Bacani <lana.bacani@lozaip.com>

Cc: palak@jayaramlaw.com <palak@jayaramlaw.com>; Marie Richmond <marie.richmond@lozaip.com>; cdepreter@agdgdlaw.com <cdepreter@agdgdlaw.com>; Vivek Jayaram <vivek@jayaramlaw.com>

Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

Hi Lena,

Following up here. Please also let us know if you will share Exhibit 1 with us so that our client can freeze any listed accounts on their platform.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

www.jayaramlaw.com

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On Dec 5, 2022, at 4:16 PM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Dear Lena,

Please let us know if you need any information in order to ensure that our client's PayPal accounts are unfrozen promptly.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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On Dec 4, 2022, at 6:40 PM, Patrick Jones <pmj@pmjpllc.com> wrote:

Palak,

As I am sure you know, we have not represented the Plaintiff for months. We have nothing to do with the case in any way shape or form. Please direct your inquiries to Lana Bacani, who you CCd on your email and who is CCd on this response.

Best of luck.

Sincerely,

Patrick M. Jones

PMJ PLLC
125 South Clark Street, 17th Floor
Chicago, Illinois 60603
Tel: (312) 255-7976
Cell: (312) 404-3225
Fax: (312) 803-0931
www.pmjpllc.com

101 North 1st Ave
Phoenix, AZ 85003

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From: Patrick Jones <pmj@patjonespllc.com>
Date: Friday, December 2, 2022 at 10:32 PM
To: Patrick Jones <pmj@pmjpllc.com>
Subject: FW: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

From: Palak Patel <palak@jayaramlaw.com>
Sent: Friday, December 2, 2022 3:32:05 PM (UTC-06:00) Central Time (US & Canada)
To: Patrick Jones <pmj@patjonespllc.com>
Cc: Lena.Bacani@lozaip.com <Lena.Bacani@Lozaip.com>; marie.richmond@lozaip.com <marie.richmond@lozaip.com>; cdepreter@agdgllaw.com <cdepreter@agdgllaw.com>; Vivek Jayaram <vivek@jayaramlaw.com>; Liz Austermuehle <liz@jayaramlaw.com>
Subject: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

Hi Patrick,

I hope you are doing well. As you know, we represent OpenCommerce, Inc., which operates the ShopBase platform. According to PayPal, our client's PayPal account has been restrained as a result of your client's Default Judgment Order.

Similar to when your clients served their TRO order upon PayPal, we suspect that our client's PayPal account has been frozen because one or more third-party merchants that use our client's e-commerce platform are named Defendants. Our client uses its now-frozen PayPal account to manage transactions at large across its entire platform; the account is not specifically associated with any particular merchant. (There are over 200,000 merchants using the ShopBase platform.). Moreover, our

client uses the funds in this account to pay its employees and otherwise operate its business. As a result, we would ask that you contact PayPal as soon as possible to request that they unfreeze our client's account. The accounts are associated with the following email addresses:

- [REDACTED]
[REDACTED]

Our clients are willing to coordinate with respect to any Defendants in Exhibit 1 to the Default Judgment Order. However, we do need to investigate whether any named merchants are on the ShopBase platform so that our client can immediately freeze those merchants' account balances to prevent any withdrawals while we gather more information about the merchant, including the merchants' contact information and information regarding any of the merchants' financial accounts. However, we cannot do that until our client's PayPal account is unfrozen.

Please let me know if you have any questions or if you would like to discuss this further.

Thank you.

<image001.png>

lawyers for innovators®

Palak V. Patel, Esq. (She/her)
Director, Legal Services

Admitted in Illinois

O: 312-736-1226
M: 847-863-7102


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Chicago IL

www.jayaramlaw.com

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<085-1 - Exhibit 1.pdf>

EXHIBIT D

From: Liz Austermuehle liz@jayaramlaw.com 
Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440
Date: December 13, 2022 at 12:14 PM
To: Marie Richmond marie.richmond@lozaip.com
Cc: Lena Bacani lena.bacani@lozaip.com, palak@jayaramlaw.com, cdepreter@agdgllaw.com, Vivek Jayaram vivek@jayaramlaw.com
Bcc: Liz Austermuehle liz@jayaramlaw.com

LA

Hi Marie,

Thanks for your time on the phone yesterday.

As discussed, I've attached the prior communications between our firm and Xped's prior counsel (our internal emails are redacted). As you can see, we informed PMJ that our client's PayPal account was frozen by mistake, which is something that has happened in the past. We also offered to freeze the accounts of any third-party merchants on the ShopBase platform that were defendants in the lawsuit. After this email was sent on December 20, 2021, Patrick from PMJ emailed PayPal on December 23, 2021 asking that OpenCommerce's account be unfrozen, and it was.

Separately, OpenCommerce was able to find Darkhorsedesigns. It was a user of their platform from May 2021 to December 2, 2021. This user has stopped all business with OpenCommerce as of December 2021, which is why they had difficulty locating it. An excel chart showing this user's details is attached.

Please confirm that in light of this information, you agree that there is no basis for the freeze. We ask that you contact PayPal and ask them to lift the freeze of OpenCommerce's accounts as soon as possible. Call me if you would like to discuss further.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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2022-12 Xped
LLC - 2...2 .xlsx



Fwd Xped LLC v
Defend...ted.pdf



Fwd Xped LLC v
The En...ted.pdf

On Dec 12, 2022, at 8:14 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

I wanted to follow up again, as I have not heard from you. My client is growing increasingly frustrated with the lack of response and the freeze that seems to be in place by mistake. Please contact me to discuss this morning so we can move forward.

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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On Dec 9, 2022, at 3:32 PM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

I am following up again. We'd really like to get this resolved ASAP, as our client's accounts remain frozen for seemingly no reason. Could you please share with us any other details you have about

“Darkhorsesdesigns” as our client does not have a record of that store using their platform. Could you also please advise PayPal to lift the freeze as to our client’s accounts as soon as possible?

Thank you,

Liz

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Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

www.jayaramlaw.com

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On Dec 8, 2022, at 10:36 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

Just checking in — do you have any other information about Darkhorsesdesigns that could be used for our client to search? Based on the name alone, they are not finding any affiliation between that defendant and their platform, yet their accounts remain frozen.

Thank you,

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Liz Austermuehle
Partner

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M: 708-250-2287

125 S Clark Street, Suite 1175

defendant "Darkhorsesdesigns" is connected with the email addresses you have identified. Exhibit 1 is attached per your request. If you believe this is in error, please provide documentation to demonstrate why the account in question should be released.

Marie E. Richmond, Esq. (She/Her)

Partner

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California § Colorado § Connecticut § Illinois § New Mexico § Texas § Utah § Virginia § Washington D.C.

(323) 967-8404 DIRECT/FAX

marie.richmond@lozaip.com | <https://www.lozaip.com/attorney/marie-richmond/>

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From: Liz Austermuehle <liz@jayaramlaw.com>

Sent: Tuesday, December 6, 2022 10:10 AM

To: Lena Bacani <lena.bacani@lozaip.com>

Cc: palak@jayaramlaw.com <palak@jayaramlaw.com>; Marie Richmond

<marie.richmond@lozaip.com>; cdepreter@agdgllaw.com <cdepreter@agdgllaw.com>; Vivek Jayaram

<vivek@jayaramlaw.com>

Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

Hi Lena,

Following up here. Please also let us know if you will share Exhibit 1 with us so that our client can freeze any listed accounts on their platform.

Thank you,

Liz

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Liz Austermuehle

Partner

O: 312-736-1227

M: 708-250-2287

125 S Clark Street, Suite 1175

Chicago, IL 60603

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On Dec 5, 2022, at 4:16 PM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Store Name	Store URL	Name of Individual	Email Address of Store Owner	Physical Address of Store Owner	PayPal Email (if Applicable)	Other Payment Processor / Financial Account	Number of Products Listed	Number of Sales	Last sales since	Current Funds Holding for Defendant	Amount Profited from the Sale of Infringing Goods	Financial Account Identifiers (number, email address, etc.) to which Funds are Transferred to Defendant
Darkhorsesdesign	www.mjoeqom.com	Tung Vu	tungadv0706@gmail.com	Vietnam	N/A	N/A	N/A	255	2021-12-02	\$0.38	N/A	Payoneer: tungadv0706@gmail.com

EXHIBIT E

From: Marie Richmond marie.richmond@lozaip.com
Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440
Date: December 21, 2022 at 3:53 PM
To: Liz Austermuehle liz@jayaramlaw.com, Lena Bacani lena.bacani@lozaip.com
Cc: palak@jayaramlaw.com, cdepreter@agdglaw.com, Vivek Jayaram vivek@jayaramlaw.com

MR

Hi Liz,

Thank you for your email. I confirm we are investigating this matter.

As I have noted previously, however, we are operating based on the information provided by PayPal. The documents you have provided do not demonstrate that there is a mistake in the information provided by PayPal. We will continue our investigation, but I encourage you to reach out to PayPal concerning this issue.

Best,
Marie

Marie E. Richmond, Esq. (She/Her)

Partner

SCHEDULE A PHONE CALL



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California § Colorado § Connecticut § Illinois § New Mexico § Texas § Utah § Virginia
§ Washington D.C.
(323) 967-8404 **DIRECT/FAX**
marie.richmond@lozaip.com | <https://www.lozaip.com/attorney/marie-richmond/>
MAIL ALL CORRESPONDENCE TO: [305 N. Second Ave., #127, Upland, CA 91786](#)

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From: Liz Austermuehle <liz@jayaramlaw.com>
Date: Wednesday, December 21, 2022 at 6:54 AM
To: Marie Richmond <marie.richmond@lozaip.com>, Lena Bacani <lena.bacani@lozaip.com>
Cc: "palak@jayaramlaw.com" <palak@jayaramlaw.com>, "cdepreter@agdglaw.com" <cdepreter@agdglaw.com>, Vivek Jayaram <vivek@jayaramlaw.com>
Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

Hi Marie and Lena,

Following up. As I mentioned below, we need this resolved this week. Thank you.

Liz



lawyers for innovators®

Liz Austermuehle

Partner

O: 312-736-1227

M: 708-250-2287

125 S Clark Street, Suite 1175

Chicago, IL 60603

www.jayaramlaw.com

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On Dec 20, 2022, at 12:02 PM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

Thanks for speaking earlier this morning. To recap, the defendant Darkhorsesdesigns, which is subject to the order entered by the court, has been disabled from our client's platforms, and has not had access to it for over a year. The attached chart (sent previously on 12/13/22) shows that it has not used our clients' platform since 12/2/2021, and the URL it was using is disabled (<http://www.mrjoegomez.com>). In light of this, there is no basis for PayPal to continue freezing our clients' accounts — we all agree that our clients are not defendants in your case and the only link is Darkhorsesdesigns, who has been barred from our client's platforms for over a year.

Because your client had the relevant order entered, PayPal will need to receive a communication from you asking that our clients' accounts [REDACTED] and [REDACTED] be released from the freeze. I am re-attaching your client's prior counsel's communication to this effect, which was sent in December of 2021. To reiterate, Darkhorsesdesigns was banned from the Shopbase group platforms in December 2021 and PayPal included our clients' accounts in the freeze by mistake. Please confirm that you will contact PayPal regarding this issue today. If you believe that there is additional information needed from us in order to release these accounts, please advise ASAP. Our client has been patient, but we need this done before the end of the week.

Thank you.

Liz

<2022-12 Xped LLC - 21-cv-6440_ XPED-402 .xlsx>

<Fwd Xped LLC v Defendants listed Ex 1 Case no 216440 request to unlock accounts_Redacted.pdf>



lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

www.jayaramlaw.com

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On Dec 19, 2022, at 11:59 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie,

Following up on my voicemail, please give me a call this afternoon. Thanks.

Liz



lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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On Dec 16, 2022, at 10:03 AM, Liz Austermuehle
<liz@jayaramlaw.com> wrote:

Hi Marie,

I am following up again. I understand we all have busy schedules, but at this point, our clients' accounts have been frozen for over

EXHIBIT F

From: Liz Austermuehle liz@jayaramlaw.com
Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440
Date: January 6, 2023 at 10:24 AM
To: Marie Richmond marie.richmond@lozaip.com, Lena Bacani lena.bacani@lozaip.com
Cc: palak@jayaramlaw.com, cdepreter@agdgllaw.com, Vivek Jayaram vivek@jayaramlaw.com
Bcc: Liz Austermuehle liz@jayaramlaw.com

Hi Marie and Lena,

I am once again following up (and on the voicemail I left yesterday for you, Marie). Please confirm whether you contact PayPal and request that the freeze is lifted from our client's accounts. If the answer is no, or we don't hear from you, we intend to seek relief with the court early next week.

Separately, your client's prior counsel sent us the attached spreadsheet when they agreed to lift the freeze in December 2021. Could you please send an updated version of this document? We note that many of the defendants, as reflected in Docket 85-1, have been removed since last year, and we'd appreciate reviewing the updated detailed list.

Please contact me ASAP so that we can get this resolved without involving the court. Based on your refusal to respond or engage with us in a meaningful way regarding the baseless freeze of our client's PayPal accounts, we will ask the court for our attorney's fees incurred in connection with bringing the motion.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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Ex 1 to
Complaint.xlsx



85-1.pdf

| On Jan 4, 2023, at 8:31 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie and Lena,

I am following up again.

Our client has received the following note after reaching out to PayPal directly:

"Our legal team have reviewed the PayPal account and show that PayPal at this time has not received a release for this particular defendant. Because this is a court order issued by a third-party law firm, PayPal cannot take action on the account unless further directed by the law firm or court. I would advise merchant to contact the law firm to come to a resolution. Once PayPal has officially received a release from the law firm, PayPal would promptly take action."

Please confirm that you will contact PayPal today and inform them that they can release our client's PayPal accounts [REDACTED] and [REDACTED].

To reiterate: our client has no connection to Darkhorsesdesigns, which is a merchant that was banned from our client's platform since December 2021, and thus is not using the platform in any way. Accordingly, there is no basis to maintain a hold on our client's PayPal account. Further, our client is not a defendant in your lawsuit, and thus there is no independent basis for you to freeze its funds. If we don't hear from you today, we will be forced to seek relief with the court, and we will inform the court about your refusal to engage in a dialogue with us about this issue. Again, if there is information you believe is necessary to complete your investigation, please tell us what that is and we'll get it for you. Otherwise, we have provided all the information you need to confirm that there is no connection between our client and Darkhorsesdesigns, the named defendant in the case, and thus your ongoing freeze of our client's PayPal accounts is baseless, and potentially in bad faith.

Thank you,

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

www.jayaramlaw.com

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On Jan 3, 2023, at 10:09 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie and Lena,

Happy new year. I am following up on the below. Please advise ASAP on what further information you need to complete your investigation.

Liz

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y a r
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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

www.jayaramlaw.com

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On Dec 28, 2022, at 9:35 AM, Liz Austermuehle <liz@jayaramlaw.com> wrote:

Hi Marie and Lena,

I wanted to follow up and see where things stand with your investigation. You mentioned that you are operating based on information provided by PayPal. Can you please share that information with us so that our client can review and see what might have caused the freeze to occur? Your client's prior counsel understood based on the information provided that there was no basis to freeze our client's account, and so I am not sure what else we can provide to you, other than the fact that the defendant at issue was barred from our client's platform in December 2021 and has not had access to it since then. If there is a specific document or piece of information needed to complete your investigation, please let me know what that is ASAP and we'll do our best to get it to you. Otherwise, we think the fact that the Defendant has been barred from our client's platform for well over a year, the fact that your client previously released our client from the TRO last December, and the fact that there have been no changes to the relevant facts since then, makes it clear that the freeze was put in place by mistake. There is simply no basis for the freeze to remain in effect, unless you have information that you have not shared with us yet.

Our client has reached out to PayPal but has not received a response. However, as I've stated numerous times, because your client had the freeze put in place, the request to unfreeze will have to come from you.

We need this resolved this week. Thank you.

Liz

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lawyers for innovators®

Liz Austermuehle
Partner

O: 312-736-1227
M: 708-250-2287

125 S Clark Street, Suite 1175
Chicago, IL 60603

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<2022-12 Xped LLC - 21-cv-6440_ XPED-402 .xlsx>

<Fwd Xped LLC v The Entities listed on Exhibit 1 Case No 21cv06440_Redacted.pdf>

<Fwd Xped LLC v Defendants listed Ex 1 Case no 216440 request to unlock accounts_Redacted.pdf>

On Dec 21, 2022, at 3:53 PM, Marie Richmond <marie.richmond@lozaip.com> wrote:

Hi Liz,

Thank you for your email. I confirm we are investigating this matter.

As I have noted previously, however, we are operating based on the information provided by PayPal. The documents you have provided do not demonstrate that there is a mistake in the information provided by PayPal. We will continue our investigation, but I encourage you to reach out to PayPal concerning this issue.

Best,
Marie

Marie E. Richmond, Esq. (She/Her)

Partner

SCHEDULE A PHONE CALL

<image001.png> **Loza & Loza, LLP** | An Intellectual Property Solutions Group
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From: Liz Austermuehle <liz@jayaramlaw.com>

Date: Wednesday, December 21, 2022 at 6:54 AM

To: Marie Richmond <marie.richmond@lozaip.com>, Lena Bacani
<lena.bacani@lozaip.com>

Cc: "palak@jayaramlaw.com" <palak@jayaramlaw.com>,
"cdepreter@agdglaw.com" <cdepreter@agdglaw.com>, Vivek Jayaram
<vivek@jayaramlaw.com>

Subject: Re: Xped LLC v. The Entities listed on Exhibit 1 | Case No.: 1: 21-cv-6440

Hi Marie and Lena,

Following up. As I mentioned below, we need this resolved this week. Thank you.